REMARKS

Applicants respectfully request reconsideration of the present application in view of the reasons that follow. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate status identifier.

Claims 1-25 and 27-53 are currently pending in this application.

Declaration Under 37 C.F.R. § 1.131 filed 02-05-2008

On page 2 of the Office Action, the Examiner indicated that the declaration under 37 C.F.R. § 1.131 filed by Applicants on 02-05-2008, in which Applicants swore behind Angelo (U.S. Patent No. 7,051,196), was ineffective:

> The applicant's arguments regarding the Declaration filed on 02/05/2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Angelo (US 7,051,196) reference for the following reasons:
>
> The Angelo et al (US 7,051,196) reference is a U.S. patent or U.S. patent application of a pending or patented application that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306....
>
> Claims 1, 4, 5, and 13-23 of the Angelo et al reference is claiming the same invention set forth by the independent claims 1, 18, and 38 of the instant application. In particular, limitations of the indpenedent claim 1 are disclosed, or at least obvious over the claim set of the Angelo reference.

Applicants respectfully disagree that the declaration filed on 02/05/2008 is inappropriate with respect to Angelo. As indicated in section 715 of the MPEP, a declaration under 37 C.F.R. § 1.131 is not appropriate "[w]here the reference U.S. patent or U.S. patent application publication claims the same patentable invention. See MPEP § 715.05 for a discussion of 'same patentable invention.'" MPEP § 715 (II). Section 715.05 of the MPEP goes on to indicate that

"37 CFR 1.131 defines 'same patentable invention' in the same way as the interference rules (37 CFR 41.203(a))" and that "[as] provided in 37 CFR 41.203(a), an interference exists if *the subject matter of a claim of one party would, if prior art, have anticipated or rendered obvious the subject matter of a claim of the opposing party and vice versa.*"

Applicants submit that no claim in Angelo, if prior art, would have anticipated or rendered obvious the subject matter of a claim of the present application. While the Examiner did allege that certain limitations of independent claim 1 are disclosed by claim 13 of the Angelo reference, the Examiner did not address all of the limitations of claim 1 of the present application, and Applicants submit that claim 13 does not disclose nor render obvious claim 1, or any other claim, of the present application.

For example, claim 1 of the present application recites " a group of more than two security levels . . . *wherein the group of more than two security levels is defined by a user of a network user node.*" The Examiner did not indicate, in asserting that Applicant's declaration was ineffective, what portion or portions of claim 13, or any other claim, of Angelo disclose or render this limitation obvious, and Applicants submit that claim 13 does not disclose or render this feature obvious. Accordingly, the subject matter of claim 13 (or any other claim of Angelo) would not, if prior art, have anticipated or rendered obvious the subject matter of claim 1 (or any other claim of the present application), as required in order for Angelo and the present application to claim the "same patentable invention."

Furthermore, in order to claim the "same patentable invention," a claim of the present application must (if prior art) anticipate or render obvious a claim contained in Angelo (i.e., the definition of "same patentable invention" requires a two-way finding of anticipation or obviousness). The Examiner has not identified any claim of the present application that would have anticipated or rendered obvious a claim of Angelo. For example, claim 13 of Angelo recites "*at boot-up*, invoking an operating mode preset for the location area determined in (c)." The Examiner has not identified any claim in the present application that would anticipate or

render obvious this limitation. Accordingly, the Examiner has not met his burden of showing that Angelo and the present application are claiming the "same patentable invention."

For at least those reasons presented above, Applicants submit that the present application and Angelo are not claiming the same patentable invention, and that the previous submission of the declaration under 37 C.F.R. § 1.131 was appropriate. Accordingly, Angelo is not believed to be available as prior art against the claims of the present application, and withdrawal of the rejection of the pending claims is respectfully requested.

Claim Rejections – 35 U.S.C. § 103(a)

On page 3 of the Office Action, claims 1-16, 18-25, 27-28, 30-48, and 50-53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Stewart (U.S. Patent No. 6,970,927) in view of Angelo (U.S. Patent No. 7,051,196). On page 11 of the Office Action, claims 17, 29, and 49 were rejected in view of Stewart in view of Angelo and further in view of Rusch (U.S. Patent No. 6,801,777). Applicants submit that the rejected claims are patentable over the cited references for at least those reasons presented below.

First, Angelo is not available as a prior art reference against the claims of the present application, as discussed above and further detailed in the Declaration under 37 C.F.R. § 1.131 submitted by Applicants on 02-05-2008.

Second, even assuming Angelo is available as a prior art reference (to which Applicants do not in any way acquiesce), the combination of references do not teach or suggest the subject matter of the rejected claims. For example, Stewart, alone or in any proper combination with Angelo, fails to teach or suggest "a group of more than two security levels . . . *wherein the group of more than two security levels is defined by a user of a network user node*," as recited in claim 1.

The Examiner acknowledged that Stewart fails to disclose this limitation. However, the Examiner went on to assert that

> Angelo et al teaches . . . wherein the group of more than two
> security levels is defined by a user of the network user node (Col 1,
> starting at line 60; Col 3, starting at line 29; Claim 1;
> security/access level or mode is defined by the remote/portable
> system.

Applicants respectfully disagree, and submit that the above-cited limitation of claim 1 is not taught by the portions of Angelo relied on by the Examiner, or any other portion(s) of Angelo. Angelo is directed to a computer 100 where an operating mode may be implemented based on the location of the computer relative to predetermined or preprogrammed location areas. Col. 3, lines 18. Referring to the portion of Angelo cited by the Examiner beginning at line 60 of column 1:

> The problems noted above are solved by an electronic system (e.g.,
> a portable computer device) embodying an access control (or
> security) system which provides varying levels of access based on
> the location of the system.

The portion of Angelo cited by the Examiner beginning at line 29 of column 3 recites:

> For example, access can be decreased or the security can be
> increased as the computer moves outside a geographic region (e.g.,
> the user's office). The access/security mode can be implemented
> on the computer 100 itself and/or communicated to the remote
> network for implementation. If the access/security mode is
> communicated to the remote network, the remote network could
> restrict use of the network by the computer in accordance with the
> computer's access/security mode.

Claim 1 of Angelo, also cited by the Examiner, recites:

> A computer system, comprising:
>
> a processor;
>
> a communication port through which the computer system can
> communicate with a remote network; and
>
> a location module coupled to said processor;

wherein said processor receives a signal from the location module to determine at boot-up the location of the computer system relative to a plurality of pre-programmed location areas and, invokes an operating mode for said computer system based on the location area in which the computer system is located.

None of the above-cited portions of Angelo teach or suggest the use of a group of at least two security levels that is *defined by a user of a network node*. Rather, Angelo teaches the use of "pre-programmed location areas," which is a very different concept. Preprogramming location areas, as in Angelo, does not teach or suggest defining a group of security levels, as in the present application. Accordingly, the combination of Stewart and Angelo fails to teach the subject matter of independent claim 1.

Independent claims 18, 30, and 38 recited similar limitations to that discussed with respect to claim 1, and are believed to be patentable over the cited combination for at least the same reasons that claim 1 is patentable.

Accordingly, withdrawal of the rejection of independent claims 1, 18, 30, and 38, and corresponding dependent claims 2-16, 19-25, 27-28, 31-37, 39-48, and 50-53 is respectfully requested.

With respect to dependent claims 17, 29, and 49, which variously depend from independent claims 1, 18, and 38, the Examiner further relied on Rusch. However, Rusch does not cure the deficiencies of Stewart and Angelo with respect to independent claims 1, 18, and 38. Accordingly, claims 17, 29, and 49 are believed to be patentable for the same reasons that claims 1, 18, and 38 are patentable, and withdrawal of the rejection of dependent claims 17, 29, and 49 is respectfully requested.

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date ____/07-30-2008/_____   By ____/Matthew J. Swietlik/_____

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